

**Notice of Allowability**

Application No.

10/516,557

Examiner

Michael P. Barker

Applicant(s)

BONNERT ET AL.

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 6/1/06.
2. ☒ The allowed claim(s) is/are 1-5, 8 and 9.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)           |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date <u>6/1/06</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                             | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance             |
|  | 9. <input type="checkbox"/> Other _____   |

**DETAILED ACTION**

Applicant canceled **Claims 6 and 7**. Applicant amended **Claims 1 and 8** via an Examiner's Amendment which appears below. Therefore, **Claims 1-5, 8, and 9** are pending in this application. Furthermore, **Claims 1-5, 8, and 9** are in condition for allowance.

***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on June 1, 2006 was correctly filed. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement was considered by the Examiner.

***Examiner's Amendment***

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it must be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Catherine McCarty on August 8, 2006. The application has been amended as follows:

1. **Claim 1**, p. 1, line 14: After the words, "R<sup>3</sup> is aryl or heteroaryl each of which is optionally substituted by one or more substituents independently selected from hydrogen, halogen, CN," **delete** the word, "nitro,".
2. **Claim 1**, p. 3, lines 4-5: After the words, "In the context of the present specification, unless otherwise indicated, an alkyl or alkenyl group or an alkyl or alkenyl moiety in a substituent group may be linear, branched or", **delete** the word, "cyclic;" and **insert**

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“cyclic.”. **Delete** the words, “wherein the compound of formula (I) is not (2-methyl-3-(2-nitrophenylthio)-1-indolyl)acetic acid.”

3. **Delete** the text of **Claim 8**. **Insert** the following text in place, “A method of treating asthma which comprises administering to a patient a therapeutically effective amount of a compound of formula (I), or a pharmaceutically acceptable salt as defined in claim 1.”

### ***Conclusion***

The record has been made clear in regard to the closest prior art in rejections put forth in the Non-Final Office Action filed March 2, 2006. The amendments and cancellations obviate the previously put forth rejections; accordingly, the rejections are withdrawn. Applicant's compounds are free of the prior art, and Applicant's method of using those novel compounds are enabled based on the assays presented as well as the references cited. In conclusion, the instant application is hereby ALLOWED.

### ***Telephone Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Barker whose telephone number is (571) 272-4341. The examiner can normally be reached on Monday-Friday 8:00 AM- 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Joseph K. McKane, can be reached at (571) 272-0699. The unofficial fax phone for this group are (571) 273-8300.

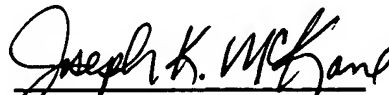
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is viable through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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